

REMARKS/ARGUMENTS

These remarks are responsive to the final Office Action dated March 10, 2009. Claims 1, 4-6, 11, 32-34, 40-50, 53, 54 and 56-65 are pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 1, 4, 11, 32-34, 40-50, 53, 56, 58, 60-62, and 65 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink *et al.* (U.S. Patent No. 6,496,935) and Joyce (U.S. Patent No. 6,519,703). These rejections are respectfully traversed.

Independent claim 1 recites, a firewall configured to “forward the data packets of [a] second type to a virus scanning engine for testing.” The Office Action relies on the combination of Fink in view of Joyce to show all the features of claim 1. Specifically, the Office Action points to the forwarding of good-confidence or marginal-confidence packets from heuristic stage 36 to heuristic stage 44 as allegedly describing the forwarding, by a firewall, of data packets of a second type to a virus scanning engine for testing. Office Action, pages 15-16. However, both heuristic stage 36 and stage 44 are both *within the firewall* (e.g., heuristic firewall 10B). The Office Action argues that Joyce specifically teaches forwarding data packets of a second type to a virus scanning engine for testing by disclosing that the packets with a rating of good-confidence or margin-confidence is sent to heuristic stage 44. Even assuming that data packets are forwarded to heuristic stage 44 as asserted, the data packets are not forwarded *from the firewall* to a virus scanning engine. Stated differently, Joyce lacks a teaching or suggestion that the firewall forwards packets to a virus scanning engine since the packets stay within the firewall. As the Office Action concedes, Fink does not cure this deficiency. *See* Office Action, page 3. Accordingly, independent claim 1 is patentably distinct over Fink in view of Joyce.

Independent claims 49, 50 and 62 recite substantially similar features as those discussed with respect to independent claim 1. Thus, claims 49, 50, and 62 are patentably distinct over Fink in view of Joyce for substantially the same reasons. Claims 4, 11, 32-34, 40-48, 53, 56, 58, 60-61, and 65 are dependent claims and are thus patentably distinct over Fink in view of Joyce for at least the same reasons as their respective base claims, and for the additional features recited therein.

For example, claims 4 and 58 recite, “wherein the classifying comprises determining that data packets of the first type contain real time data.” The Office Action alleges that either Fink or Joyce disclose this feature. Office Action, page 7 (citing l. 1-5 of the Abstract and col. 3, l. 32-39 of either Joyce or Fink). However, and as previously noted in Applicants’ Response dated December 3, 2008, nowhere in the cited passages or the remainder of either of these references is such a type of classification taught or suggested. Significantly, the Office Action does not address these arguments. Accordingly, claims 4 and 58 are allowable for this additional reason.

Claims 5, 57, 59, 63 and 64 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink and Joyce and further in view of Lee (U.S. Patent No. 7,047,561, “Lee”). These rejections are respectfully traversed.

The combination of Fink and Joyce does not disclose all the features of claims 1, 49, 50, and 62. In particular, Lee does not cure the deficiencies of Fink and Joyce as discussed above with respect to claim 1. Accordingly, claims 1, 49, 50, and 62 are patentably distinct over Fink in view of Joyce and in further view of Lee. Claims 5, 57, 59, 63 and 64 are dependent claims and are thus patentably distinct from the asserted combination of Fink, Joyce and Lee for at least the same reasons as their respective base claim, and for the additional features recited therein.

For example, claims 5, 57, and 59 relate to wherein classifying the data packets based on the contents of the data packets includes determining whether at least one of the data packets includes content for a real-time audio or video data stream. The Office Action asserts a combination of Fink, Joyce and Lee to arrive at the recited features of claims 5, 57 and 59. The Office Action’s alleged motivation for making the asserted combination is that such a combination would provide an advantage in optimizing the processing speed through the use of the packet filter operating at the network layer. However, the Office Action assertions are merely based on an application of impermissible hindsight reconstruction in piecing together the prior art references using Applicants’ Specification as a blueprint to arrive at the asserted combination. The Office Action’s assertion that one of ordinary skill would somehow combine the “high-confidence,” “good-confidence” or “marginal-confidence” types of packets in Joyce with the use of a firewall with real-time communications allegedly described in Lee to classify data packets by determining whether the data packets includes content for real-time audio or

video data streams is non-sensical and clearly based on knowledge gleaned only from Applicants' disclosure. Indeed, nowhere does either reference (or any cited reference) teach or suggest a need or reason to classify packets based on whether the packet includes content for real-time audio or video data streams. For example, Joyce does not teach or suggest that any one of good-confidence packets, high-confidence or marginal-confidence correspond, in particular, to data packets that include content for real-time audio or video streams. Accordingly, claims 5, 57, and 59 are allowable for this additional reason.

Claims 6 and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink and Joyce and further in view of Lyle (U.S. Patent No. 6,886,102, "Lyle"). These rejections are respectfully traversed.

As discussed above Fink and Joyce do not disclose all the features of claims 1 and 50. Lyle does not cure the deficiencies of Fink and Joyce. Thus, claims 1 and 50 are patentably distinct over Fink in view of Joyce in further view of Lyle. Claims 6 and 54 depend from claims 1 and 50, respectively, and are patentably distinct over Fink in view of Joyce and Lyle for at least the reasons as their ultimate base claim, and for the additional reasons recited therein.

CONCLUSION

Based on the foregoing, Applicants respectfully submit that the application is in condition for allowance and a Notice to that effect is earnestly solicited. Should the Examiner believe that anything further is desirable in order to place the application in even better form for allowance, the Examiner is respectfully urged to contact Applicants' undersigned representative at the below-listed number.

Respectfully submitted,
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